

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

GARY ROBINSON,

Plaintiff,

v.

LUIS LANDA, *et al.*,

Defendants.

3:12-cv-00525-LRH-WGC

ORDER

Before this Court is the Report and Recommendation of U.S. Magistrate Judge William G. Cobb (doc. #3¹) entered on November 14, 2012, recommending granting Plaintiff's application to proceed *in forma pauperis* (doc. #1) and sustaining in part and dismissing in part Plaintiff's Complaint (doc. #1-1); both documents were filed on September 27, 2012. No objection to the Report and Recommendation has been filed. The action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)B and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has conducted its *de novo* review in this case, has fully considered the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and Recommendation

¹Refers to court's docket number.

1 (doc. #3) entered on November 14, 2012, should be adopted and accepted.

2 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation (doc.
3 #3) entered on November 14, 2012, is adopted and accepted, and Plaintiff's application for leave to
4 proceed *in forma pauperis* (doc. #1) is GRANTED. The Clerk of the Court shall DETACH and FILE
5 Plaintiff's Complaint (doc. # 1-1). The movant herein is permitted to maintain this action to
6 conclusion without the necessity of prepayment of fees or costs or the giving of security therefore. This
7 order granting *in forma pauperis* status does not extend to the issuance of subpoenas at government
8 expense.

9 IT IS FURTHER ORDERED that Plaintiff's Complaint shall PROCEED on the Fourth
10 Amendment unreasonable seizure (excessive force) claim in Court I as to Defendants Landa, Fay and
11 Dove;

12 IT IS FURTHER ORDERED that Plaintiff's Complaint shall PROCEED on the supplemental
13 common law claims of assault and battery in Count II under 28 U.S.C. § 1367 as to Defendants Landa,
14 Fay and Dove;

15 IT IS FURTHER ORDERED that Plaintiff's Fifth Amendment claim, his Eighth Amendment
16 claim, and his substantive due process claim under the Fourteenth Amendment in Count I shall be
17 **DISMISSED with prejudice and without leave to amend;**

18 IT IS FURTHER ORDERED that Plaintiff's procedural due process claim under the Fourteenth
19 Amendment shall be **DISMISSED without prejudice and with leave to amend;**

20 IT IS FURTHER ORDERED that Defendant Rogers shall be **DISMISSED without prejudice**
21 **and with leave to amend;** and

22 IT IS FURTHER ORDERED that Plaintiff shall be given thirty (30) days from the date of this
23 order within which to file an amended complaint remedying, if possible, the defects in the Complaint
24 as explained in the Report and Recommendation. Any allegations, parties, or requests for relief from
25 prior papers that are not carried forward in the amended complaint will no longer be before the court.
26 Plaintiff is cautioned that if he fails to file an amended complaint within the time period specified

1 above, the action will be dismissed. Plaintiff shall clearly title the amended complaint as such by
2 placing the words "AMENDED COMPLAINT" on page 1 in the caption, and Plaintiff shall place the
3 case number, 3:12-cv-00525-LRH-WGC, above the words "AMENDED COMPLAINT" in the space
4 for "Case No."

5
6 IT IS SO ORDERED.

7 DATED this 7th day of January, 2013.



8
9 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE